**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Dated: 23.02.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

**C.M.A.(MD)No.1047 of 2013**

Malaiappan .. Appellant/Petitioner

Vs.

1. Chandiran
2. The Branch Manager
   IFFCO Tokya General Insurance
   Thirunagar, Chennai-17 ..Respondents/Respondents

**Prayer** : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 08.04.2011 passed MCOP No.136 of 2007 by the Motor Accident Claims Tribunal/Sub Court, Sankarankovil.

For Appellant : Mr.Ramesh @ Ramiah

For R1 : No appearance

For R2 : Mr.S.Srinivasa Raghavan

**JUDGMENT**

This Civil Miscellaneous Appeal has been filed as against the order passed Motor Accident Claims Tribunal, Sub Court, Sankarankovil in M.C.O.P.No. 136 of 2007 dated 25.07.2012, wherein the appellant herein has filed claim petition before the Tribunal and the Tribunal has awarded a sum of Rs.3,00,000/- along with interest @ 7.5% per annum by directing the first respondent/ owner of the vehicle by exonerating the insurance company.

2. For the sake of convenience and brevity, the parties hereinafter will be referred to as per their status/ranking in the Tribunal.

3. According to the petitioner he sustained injuries in the motor accident on 11.03.2007 @ 4.30 pm., when he was travelling as pillion rider in a two wheeler bearing Reg. No. TN 76 Y 1767. At that time the vehicle bearing Reg.No. PY 01 V 9886 was ridden by its rider in a rash and negligent manner and dashed against the petitioner's motor cycle, due to which he sustained injuries. The vehicle belong to the first respondent and the same was insured with the second respondent. Due to the accident he sustained permanent disability, thereby he claimed a sum of Rs.10 lakhs towards compensation.

4. The case of the second respondent is that the accident was not occurred due to the negligence on the part of the first

respondent driver at the same time the accident occurred due to the negligence on the part of the rider of the motor cycle in which the petitioner travelled. The respondent denied the age, income and occupation of the petitioner and also the injuries sustained by him. The first respondent is not a real owner and the driver of the first respondent has no valid license on the date of accident , therefore the second respondent is not liable to pay any compensation to the petitioners.

5. Before the Tribunal the petitioner has examined P.W.1 to P.W.4 and marked Exs.P.1 to P.11. On the side of the respondent they have examined R.W.1 and 2 and marked document Ex.R.1 and R2.

6.After evaluating the oral and documentary evidences adduced on either side, the Tribunal has awarded a sum of Rs. 3,00,000/- towards compensation by directing the first respondent, owner of the vehicle by exonerating the insurance company, since there is a violation of condition of policy. As against the said order of tribunal, the present appeal has been preferred by the petitioner on various ground including the liability fixed as against the first respondent/owner of the vehicle.

7. The learned for the appellant would contend that the accident was happened due to the negligence on the part of the driver of the first respondent and the first respondent vehicle was insured with the second respondent and the same was also admitted by the second respondent. Whileso, the second respondent is liable to pay the compensation to the petitioner but the Tribunal fixed liability as against the first respondent/owner of the vehicle on the ground that the first respondent had no valid license on the date of the accident. Since the petitioner is third party, the second respondent can pay the compensation amount to the petitioner and then he can recover the same under the Doctrine of pay and recovery, but the Tribunal without considering the same erroneously fixed the liability as against the first respondent and exonerated the second respondent insurance company, thereby the order passed by the Tribunal is liable to be set aside.

8. The learned counsel appearing for the second respondent would contend that the accident is admitted but the driver of the first respondent had no license on the date of accident and to prove the same the respondent have examined R.W.1 and 2 and marked document Ex.R.1 and R2 and thereby proved that the driver of the

first respondent had no license on the date of accident, hence the second respondent/insurance company is not liable to pay any compensation to the petitioner. The Tribunal also after analyzing the evidence correctly fixed the liability as against the owner of vehicle hence the appeal is liable to be dismissed.

9. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal, frames the following point for determination in this appeal:

i) Whether the appeal is liable to be allowed or not?

10. In this case there is no dispute in respect of the involvement of the vehicle in the accident and the negligence on the part of the driver of the first respondent and there is no dispute that the first respondent vehicle was insured with the second respondent on the date of accident. The only contention of the second respondent is that on the date of accident the driver of the first respondent had no license. In this context on the side of the respondent they have examined R.W.1 and 2 and marked document Ex.R.1 and R2. On perusal of Ex.R1 reveals that the driver of the first respondent had no license on the date of accident and he had license from 16.03.2007 to 15.03.2008. The date of accident is

11.03.2007. Therefore from the evidence on the side of the respondent it is clear that the driver of the first respondent had no license on the date of accident, thereby the first respondent has violated the condition of policy. Though there is violation of condition of policy as far as petitioner is concerned he is third party to the insurance and on the date of accident the insurance policy was in force, thereby the insurance company has to pay the award amount to the petitioner and the same can recovered from the first respondent under the principle of pay and recovery. The Tribunal has correctly fixed the negligence on the part of the driver of the first respondent, however failed to consider that insurance company can pay and recover, therefore the order passed by the Tribunal is liable to be modified. In this case there is no dispute in respect of quantum of amount. The appellant/petitioner also not disputed the quantum of amount

11. In the result this Civil Miscellaneous petition is partly allowed and the order passed by the Tribunal is modified to the effect that the petitioner is entitled to the award as ordered by the Tribunal along with interest and the second respondent is directed to pay the said amount along with interest and thereafter recover the same from the first respondent under the Doctrine of pay and

recovery. Time for payment is two months from the date of order of this Court. No cost.

**23.02.2024**

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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**To:**

1. The Motor Accident Claims Tribunal
   Sub Court, Sankarankovil

2. The Record Keeper,
   Vernacular Section,
   Madurai Bench of Madras High Court,
   Madurai.

**P. DHANABAL,J.**

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